Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4812 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box
47

MFDR Date Received
APRIL 7, 2005

Respondent Name

TRANSPORTATION INSURANCE CO

MFDR Tracking Number
M4-05-6248-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated April 5, 2005: "This injured employee was treated at Memorial Hermann from April 7, 2004 through April 12, 2004. Due to the nature of the patient's extensive back surgery and post operative course, the patient required unusually extensive services and medical supplies during his stay. The patient remained hospitalized for a period of 5 days post operatively." "The audit did not provide the health care provider with sufficient information to justify a reduction of its usual and customary charges by over 83%...For instance, was the audit company comparing prices of similarly situated Level I trauma and teaching hospitals in the medical Center of Houston, Texas in comparing rates?" "The TWCC Rules and Regulations, Rule 134.401 (6) provides that all audited bills over $40,000.00 shall be paid at 75% of the audited charges. Only personal items, items not documented as being rendered during the admission, and items or services rendered which were not related to the compensable injury are excludable." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

Requestor's Supplemental Position Summary Dated May 3, 2006: "This patient underwent a posterior stabilization and fusion over the L4-5 area with pseudoarthrosis repair and re-fusion at the L5-S1 area. The nature of these procedures are inherently unusually extensive and complicated procedures requiring extraordinary and costly services and supplies."

Requestor's Supplemental Position Summary Dated May 18, 2006: "Please allow this letter to serve as the medical provider's objection to the insurance carrier's supplemental response to request for dispute resolution. The insurance carrier's response lacks credibility and is unsubstantiated by the patient's medical records."

Requestor's Supplemental Position Summary Dated November 15, 2011 and November 28, 2011:
"The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed $40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement."

Affidavit of Michael C. Bennett dated November 14, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The attached Exhibit A is the itemized statement and claim form that provides a record of information for services and supplies that the Hospital provided to the patient. This patient was admitted and surgically treated at the Hospital from April 7, 2004 through April 12, 2004. The medical records indicate that this injured worker underwent an extensive spinal fusion at the

L4-5 level, with instrumentation. The patient received necessary care and treatment during the course of his stay." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital, as noted, provided surgical care and subsequent post operative services to this patient who incurred the usual and customary charges in the amount of $86,231.00 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and surgical treatment, the services and procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: $50,090.55

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated May 26, 2005: Position summary not included in dispute packet.

Response Submitted by: Transportation Insurance Co., P.O. Box 27537, Houston, TX 77227

Respondent's Supplemental Position Summary Dated June 13, 2005: "We have been retained by Transportation Insurance Company ('Carrier') to represent its interests in the above-referenced Request for Medical Dispute Resolution." "Reimbursement in this case should be pursuant to the standard per diem reimbursement method. The stop-loss method for outlier cases does not apply as the services provided to the claimant were not unusually extensive and costly."

Response Submitted by: Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

Respondent's Supplemental Position Summary Dated May 15, 2006: "In this case, the surgery was elective and was not necessitated by any type of emergency. There is no evidence that the claimant had any co-morbidities that required the hospital to provide 'unusually extensive and costly' services. There is no evidence that any complications arose during the surgery that required the hospital to provide 'unusually extensive and costly' services. On the contrary, the Operative Report states, '**COMPLICATIONS: Nil**.' The discharge Summary also states, '**His surgery was uncomplicated and he was subsequently discharged to his home**. There is no evidence that there were any complications that arose post-operatively that resulted in the need for 'unusually extensive and costly' services. Furthermore, the hospital has not identified any 'unusually extensive and costly' services that it was required to provide in this particular care."

Response Submitted by: Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

Respondent's Supplemental Position Summary Dated December 5, 2011: "The medical records do not demonstrate that this was an outlier case. There is no evidence that the requestor provided services in this case that would not normally be provided to someone receiving the same type of surgery and that were unusually extensive and unusually costly. Furthermore, the requestor has not identified any specific services it contends were unusually extensive and it has not established the unusual cost of those services. In short, the requestor has not met its burden of proof. For these reasons, the Division should not approve reimbursement under the stop-loss exception but should affirm that reimbursement should be pursuant to the standard per diem method."

Response Submitted by: Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
April 7, 2004 through April 12, 2004	Inpatient Hospital Services	$50,090.55	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §133.304, 17 *Texas Register* 1105, effective February 20, 1992, amended effective July 15, 2000 sets out the procedures for medical payments and denials.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- F-Fee guideline MAR reduction.
- 993-This service is not reimbursable.
- G-Unbundling.
- 855-013-Payment denied-the service is included in the global value of another billed procedure.
- M-No MAR.
- 855-016-Payment recommended at fair and reasonable rate.
- N-Not appropriately documented.
- 880-134-Charge denied due to lack of sufficient documentation of services rendered 100%.
- O-Denial after reconsideration.
- 920-002-In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.

Issues

1. Did the respondent provide sufficient explanation for denial of the disputed services?
2. Did the audited charges exceed $40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as

described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. The requestor in its position statement asserts that "The audit did not provide the health care provider with sufficient information to justify a reduction of its usual and customary charges by over 83%..." 28 Texas Administrative Code §133.304(c), 17 Texas Register 1105, effective February 20, 1992, applicable to dates of service in dispute, states, in pertinent part, that "At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s). A generic statement that simply states a conclusion such as 'not sufficiently documented' or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section." Review of the submitted documentation finds that the explanation of benefits were issued using the division-approved form TWCC 62 and noted payment exception codes "F, 993, G, 855-013, M, 855-016, N, 880-134, O, and 920-002".

   These payment exception codes and descriptions support an explanation for the reduction of reimbursement based on former 28 Texas Administrative Code §134.401. These reasons support a reduction of the reimbursement amount from the requested stop-loss exception payment reimbursement methodology to the standard per diem methodology amount and provided sufficient explanation to allow the provider to understand the reason(s) for the insurance carrier's action(s). The Division therefore concludes that the insurance carrier has substantially met the requirements of 28 Texas Administrative Code §133.304(c).

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $86,231.00. The Division concludes that the total audited charges exceed $40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "…independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "Due to the nature of the patient's extensive back surgery and post operative course, the patient required unusually extensive services and medical supplies during his stay. The patient remained hospitalized for a period of 5 days post operatively." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges." This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: "This patient underwent a posterior stabilization and fusion over the L4-5 area with pseudoarthrosis repair and re-fusion at the L5-S1 area. The nature of these procedures are inherently unusually extensive." In support of the requestor's position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor's supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
4. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when

compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was five days. The surgical per diem rate of $1,118.00 multiplied by the length of stay of five days results in an allowable amount of $5,590.00.
- 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $30,030.00.
- Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement cam be recommended.

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed $768.00 for revenue code 390-Blood/Storage Processing and $502.75 for revenue code 391-Blood Administration. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 390 and 391 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed $332.00/unit for Desflurane 240ml and $1,276.75/unit for Hetastarch/E-Lytes, Lac 6% 500. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is $5,590.00. The respondent issued payment in the amount of $14,582.70 Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to $0.00 additional reimbursement for the services in dispute.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	10/19/2012 Date
Signature	Medical Fee Dispute Resolution Manager	10/19/2012 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.